

# Shainis & Peltzman, Chartered

Counselors at Law

Suite 240  
1850 M Street, N.W.  
Washington, D.C. 20036

(202) 293-0011

Fax (202) 293-0810

e-mail: shainispeltzman@s-plaw.com

Aaron H. Shainis  
aaron@s-plaw.com

Lee J. Peltzman  
lee@s-plaw.com

ORIGINAL

Of Counsel

William H. AnRoss, III  
bill@s-plaw.com

Robert J. Keller  
bob@s-plaw.com

December 30, 2002

**VIA HAND DELIVERY**

RECEIVED

DEC 30 2002

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Portals II - 12<sup>th</sup> Street Lobby  
Filing Counter - TW-A325  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

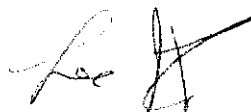
Re: MM Docket No. 02-263  
RM-10498  
RM-10606  
Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Safford and Eagar, Arizona)  
Request for Approval of Withdrawal

Dear Ms. Dortch:

Transmitted herewith, on behalf of Eagar Broadcasting ("EB"), is an original and four (4) copies of its Request for Approval of Withdrawal of EB's Counterproposal in the above-referenced rulemaking proceeding. Attached to that Request is a Declaration from Eagar Broadcasting stating that it has not received consideration in excess of its legitimate and prudent expenses incurred in preparing, filing and prosecuting its Counterproposal.

Please contact the undersigned in the event the Commission has any questions with respect to the Eagar Broadcasting Withdrawal.

Sincerely,



Lee J. Peltzman  
Counsel for EAGAR BROADCASTING

Enclosure

**RECEIVED**

**DEC 30 2002**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Amendment of Section 73.202(b), ) MM Docket No. 02-263  
Table of Allotments, ) RM-10498  
FM Broadcasting Stations. ) RM-10606  
(Safford and Eagar, Arizona) )

TO: Chief, Allocations Branch  
Audio Division

**REQUEST FOR APPROVAL OF WITHDRAWAL**

Eagar Broadcasting ("EB"), by its attorney, pursuant to Section 1.420(j) of the Commission's rules, hereby submits this request for approval of the withdrawal by EB of its Counterproposal in the above-captioned docket. In support of this request, the following is submitted.

1. Docket No. 02-263 was initiated by the proposal of Graham County FM Associates ("Graham") seeking the allotment of Channel 246C3 to Safford, Arizona. EB filed a Counterproposal in this proceeding proposing the allotment of Channel 264C to Eagar, Arizona. Graham did not file Comments in support of its proposal and no other Counterproposal was filed.

2. EB has agreed to withdraw its Counterproposal for Eagar. EB has entered into a Settlement Agreement with 3 Point Media-Arizona, LLC ("3 Point"), which has agreed to reimburse EB for its reasonable and legitimate expenses relating to the preparation, filing and prosecution of its Counterproposal. See Attachment A (Settlement Agreement between 3 Point

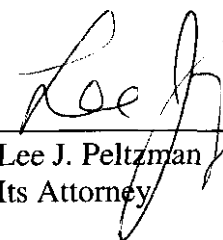
and EB). EB has executed a Declaration requesting the withdrawal of its Counterproposal and certifying that it has not received nor will it receive consideration in excess of its legitimate and prudent expenses in exchange for the withdrawal of its Counterproposal. See Attachment B (Withdrawal and Declaration of Kristen Smith). 3 Point has also submitted a Declaration certifying that it has not paid nor will it pay consideration to EB in excess of its legitimate and prudent expenses for the withdrawal of its Counterproposal. See Attachment C. Thus, this Request and its attachments demonstrate compliance by the parties with Section 1.420 of the Commission's rules.

WHEREFORE, in light of the foregoing, it is respectfully requested that this Request be granted and the Counterproposal for Eagar, Arizona filed by EB be withdrawn.

Respectfully submitted,  
EAGAR BROADCASTING

SHAINIS & PELTZMAN, CHARTERED  
1850 M Street, N.W. - Suite 240  
Washington, D.C. 20036  
2022930011

By:

  
\_\_\_\_\_  
Lee J. Peltzman  
Its Attorney

December 30, 2002

## **ATTACHMENT A**

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into this 9<sup>th</sup> day of December, 2002, by and between 3 Point Media-Arizona, LLC ("3 Point") and Eagar Broadcasting ("EB"), together referred to as the "Parties."

### **W I T N E S S E T H**

WHEREAS, 3 Point's successor in interest, Arizona Radio Partners, LLC ("Arizona Radio") has filed a Counterproposal with the Federal Communication Commission ("FCC" or the "Commission") in MM Docket 02-73; and

WHEREAS, EB has filed a Counterproposal in MM Docket 02-263 supporting the allotment of Channel 264C to Eagar, Arizona; and

WHEREAS, the Eagar Counterproposal is in conflict with the earlier filed Arizona Radio Counterproposal; and

WHEREAS, EB agrees to withdraw and otherwise request dismissal of its proposal;

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises contained herein, the Parties agree as follows:

1. This Agreement is entered into subject to approval by the FCC and shall be voided if the FCC shall deny it.
2. Within five (5) days of the date of this Agreement, EB agrees to withdraw its Eagar Counterproposal. The withdrawal request shall be accompanied by supporting documentation required by Section 1.420(j) of the Commission's rules, including but not limited to a Declaration of documented expenses of EB.
3. 3 Point agrees that, in exchange for the withdrawal of EB's Eagar Counterproposal, 3 Point shall pay EB the lesser amount of Five Thousand Dollars (\$5,000.00),

which amount is equal to or less than EB's documented expenses related to the preparation, filing and prosecution of its Counterproposal, or such lesser amount as the Commission may otherwise approve. EB agrees to withdraw its Counterproposal in return for the payment of Five Thousand Dollars (\$5,000.00) or such lesser amount as the Commission may otherwise approve.

4. Implementation of this Agreement and any pleading filed in connection herewith is conditioned upon the issuance of an FCC action, which shall become final, as defined herein, dismissing the Counterproposal of EB. Within five (5) days of the issuance of an FCC action dismissing the Counterproposal of EB, and such action becoming final, the relevant amount set forth in Paragraph 3, above, shall be paid by 3 Point by check or wire transfer to EB or its representative. For the purposes of this Agreement, finality refers to an action by the FCC (i) which has not been vacated, reversed, stayed, set aside, annulled or suspended; (ii) with respect to which no timely repeal, request for stay or petition for rehearing, reconsideration or review by any party or by the FCC on its own motion is pending; and (iii) as to which the time for filing any such appeal, request, petition or similar document, or for the reconsideration or review by the FCC on its own motion has expired.

5. Any notice required hereunder shall be in writing, and any payment, notice or other communication shall be deemed given when delivered personally or mailed by certified or registered mail, postage pre-paid, within return receipt requested to the following addresses:

For Eagar Broadcasting:      Eagar Broadcasting  
   Kristen Smith  
   58 Skyline Crest  
   Monterey, CA 93940

With a copy to:              Lee J. Peltzman, Esq.  
   Shainis & Peltzman, Chartered  
   1850 M Street, N.W., Suite 240  
   Washington, DC 20036

For 3 Point Media-Arizona: 3 Point Media-Arizona, LLC  
Bruce Buzil  
980 North Michigan Avenue, Suite 1880  
Chicago, IL 60611

Either Party hereto may change its above address by written notice to the Party in the manner provided this paragraph.

6. Failure of any Party to complain of any act of omission on the part of the other Party in breach of this Agreement, no matter how long the same continues, shall not be deemed to be a waiver by said Party of any of its rights hereunder. Any waiver by either Party of any of its rights hereunder shall be specific and in writing. No waiver by any Party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a consent to any subsequent breach of the same or other provisions

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

8. This Agreement shall be binding and shall inure to the benefit of the Parties to it and their respective successors, heirs and assigns.

9. Each Party hereto expressly warrants that it has the full power and authority to enter into this Agreement and execute the same, and that there is no constraint upon such Party's legal authority to perform its obligations hereunder.

10. This Agreement may be executed in one or more counterparts, and also executed shall constitute one Agreement, binding on the Parties hereto, notwithstanding that the Parties are not signatory to the same original or the same counterpart.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement on  
the dates specified below.

3 POINT MEDIA-ARIZONA, LLC

Dated December 26, 2002

By: 

Name: Bruce Bazil

Title: Manager

EAGAR BROADCASTING

Dated: December \_\_, 2002

  
Kristen Smith



IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement on  
the dates specified below.

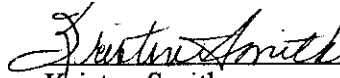
3 POINT MEDIA-ARIZONA, LLC

Dated December 12, 2002

By: \_\_\_\_\_  
Name: Bruce Buzil  
Title: Manager

EAGAR BROADCASTING

Dated: December 11, 2002

  
Kristen Smith

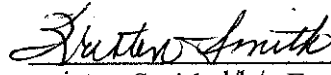
## **ATTACHMENT B**

## **WITHDRAWAL AND DECLARATION**

I, Kristen Smith, hereby declares upon penalty of perjury that the following is true and correct to the best of my knowledge and belief. I am the owner of Eagar Broadcasting ("EB"). On October 2, 2002, EB submitted a Counterproposal through my attorney in MM Docket 02-263, in which EB expressed an interest in the allotment of Channel 264C to the community of Eagar, Arizona. EB hereby withdraws its Counterproposal expressing an interest in the allotment of Channel 264C to Eagar and otherwise requests the dismissal of its Counterproposal.

I hereby certify that neither EB nor I have received nor will EB or I receive any money or other consideration in excess of our legitimate and prudent expenses incurred in the preparation, filing and prosecution of my expression of interest in this rule making.

Dated: December 12, 2002

  
\_\_\_\_\_  
Kristen Smith d/b/a Eagar Broadcasting

## **ATTACHMENT C**

# DECLARATION

I, BRUCE BUZIL, hereby declare upon penalty of perjury, that the following is true and correct to the best of my knowledge and belief. I am Manager of 3 Point Media-Arizona, LLC ("3 Point"). 3 Point has agreed to reimburse Eagar Broadcasting ("EB") for its legitimate and prudent expenses incurred in the preparation, filing and prosecution of its expression of interest in a Counterproposal filed for Channel 264C at Eagar, Arizona in MM Docket 02-263.

I hereby certify that neither 3 Point nor any of its principals has paid nor promised to pay any money or other consideration to EB or any of its principals in excess of its legitimate and prudent expenses incurred in the preparation, filing and prosecution of its Counterproposal in this rule making. Moreover, there are no oral agreements relating to the dismissal or withdrawal.

Dated: December 26, 2002

  
Bruce Buzil  
Manager  
3 Point Media-Arizona, LLC

## CERTIFICATE OF SERVICE

I, Karen McNeill, a secretary at Shainis & Peltzman, Chartered, hereby certify that a true and correct copy of the foregoing "Request for Approval of Withdrawal" was sent on this 30<sup>th</sup> day of December, 2002, via first-class United States mail, postage pre-paid, to:

John A. Karousos\*  
Assistant Chief  
Audio Division  
Office of Broadcast License Policy  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Dan J. Alpert, Esq.  
Law Office of Dan J. Alpert  
2120 N. 21<sup>st</sup> Road  
Arlington, VA 22201  
(Counsel to Graham County FM Associates)

John J. McVeigh, Esq.  
Attorney at Law  
12101 Blue Paper Trail  
Columbia, Maryland 21044-2787  
(Counsel to NPR Phoenix, LLC)

Ms. Rolanda F. Smith\*  
Audio Division  
Office of Broadcast License Policy  
Media Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

John F. Garziglia, Esq.  
Mark Blacknell, Esq.  
Womble, Carlyle, Sandridge & Rice  
Seventh Floor  
1401 Eye Street, N.W.  
Washington, DC 20005  
(Counsel to Arizona Radio Partners, LLC)

John S. Logan, Esq.  
Nam E. Kim, Esq.  
Dow, Lohnes & Albertson, PLLC  
1200 New Hampshire Avenue, N.W.  
Suite 800  
Washington, D.C. 20036  
(Counsel to 3 Point Media-Arizona, LLC)



Karen McNeill

December 30, 2002

\*Via Hand Delivery